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Final Determination of Domicil in the United States

Fowler V. Harper
Indiana University School of Law

COMMENTS

FINAL DETERMINATION OF DOMICIL IN THE UNITED STATES*

The death in 1930 of Dr. John T. Dorrance, Campbell Soup magnate, has raised a question of the utmost importance to persons who desire their estates to be subjected to but one inheritance tax and to states desirous of replenishing diminished treasuries by collecting a tax upon every possible estate. Upon the death of Dr. Dorrance, both New Jersey and Pennsylvania assessed an inheritance tax against that part of the estate which consisted of shares of stock in the Campbell Soup Co. which was valued in excess of a hundred and fifteen million dollars. Before any litigation arose out of this situation, those most interested in the estate obviously preferred to pay the New Jersey inheritance tax rather than the Pennsylvania tax, the difference between the two amounting to five million dollars. Indeed, this was clearly the desire of the decedent before his death, as he had taken every precaution known to the legal profession at that time to insure that his estate would be subjected only to the New Jersey tax. Plans of the decedent, however, were upset when the Supreme Court of Pennsylvania in 1932 found that Dr. Dorrance had been domiciled at his death in Pennsylvania and that the estate was thus subject to the death duties of that state.[1] The estate petitioned the Supreme Court of the United States for a writ of certiorari to the Supreme Court of Pennsylvania. The writ was denied without opinion.[2]

It was not to be supposed, however, that New Jersey would readily relinquish its claim to the twelve million dollars tax which it had imposed upon the estate. Originally desiring to pay the New Jersey tax, the estate, of course, now resists it. Having exhausted every possibility of avoiding the Pennsylvania tax, the executors can at best now hope to avoid paying the New

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[1] In re Dorrance's Estate (1932), 309 Pa. 151, 163 Atl. 303, noted in (1933) 81 U. of Pa. L. Rev. 177.

[2] (1933) 288 U. S. 617.

Jersey tax also. The Prerogative Court of New Jersey, on February 7, 1934, decided that Dr. Dorrance was domiciled in New Jersey at his death.[3] Persons interested in the estate of Dr. Dorrance are now in the position of being required to insist that, in spite of the declarations of the decedent and the contention of the parties in the Pennsylvania litigation, Dr. Dorrance was domiciled at his death in the Commonwealth of Pennsylvania. It may be assumed that the estate will again attempt to invoke a review by the United States Supreme Court in an effort to obtain a ruling from that body on the one and only issue in the entire litigation, namely, the domicil of the decedent at his death.

The Supreme Court is unequivocally committed to the proposition that one and only one inheritance tax may be imposed upon an estate.[4] Dr. Dorrance's estate consists predominantly of shares of stock, and it is the domicil of the decedent at his death which affords jurisdiction to impose death duties thereon.[5] In a series of recent decisions,[6] the Supreme Court has been at great pains to clarify its position on multiple taxation, and in so doing has made important changes in the law.[7] The Court has, it seems, sought to select some one essential contact as the determining factor in tax cases. Thus, just as in the case of land, it is the state where the land is that may tax; so in the case of chattels, it is only the state where the chattels are;[8] in the case of intangible personal property, it is only the domicil of the decendent that may exact death duties.[9] This is consistent with the usual technique in the Conflict of Laws. Such a technique is reasonably satisfactory because the so-called "contact points" are of such a character that, in a given case, one and only one such place can, by hypothesis, exist. Thus, as everyone knows, a person can have at any given time but one domicil.[10]

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[3] In re Dorrance's Estate (1934), 170 Atl. 601.

[4] Farmer's Loan & Trust Co. v. Minnesota (1930), 280 U. S. 204, 50 Sp. Ct. 98; Baldwin v. Missouri (1930), 282 U. S. 1, 51 Sp. Ct. 54; Beidler v. South Carolina Tax Commission (1930), 281 U. S. 586, 50 Sp. Ct. 436; First Nat'l Bank of Boston v. Maine (1932), 284 U. S. 312, 52 Sp. Ct. 174.

[5] First Nat'l Bank of Boston v. Maine (1932), 284 U. S. 312, 52 Sup. Ct. 174.

[6] See supra, note 4.

[7] Cf. Blackstone v. Miller (1903), 188 U. S. 189, 23 Sp. Ct. 277, with Farmers Loan and Trust Co. v. Minnesota, supra note 4.

[8] Frick v. Pennsylvania (1924) 268 U. S. 473, 45 Sp. Ct. 603.

[9] Blodgett v. Silberman (1928), 277 U. S. 1, 48 Sp| Ct. 410; First Nat'l Bank of Boston v. Maine (1932), 284 U. S. 312, 52 Sp. Ct. 174.

[10] Restatement of Conflict of Laws (P. F. Draft No. 1), § 13.

Since the only state which has jurisdiction to impose an inheritance tax on intangibles is the state of the domicil of the decedent at his death, a multiple inheritance tax is thus theoretically impossible.

But the present litigation raises the question what court is to determine the decedent's domicil in a given case and what is the effect of such determination when made. Of course, the court in which the question is raised must pass upon it. This is an obvious fact and not a rule of law. The question is then presented, what law will the forum employ in determining the decedent's domicil. As a matter of statement of the law, this is not of great importance in as much as practically every common law state adopts the same formula to determine domicil in most cases. This is usually expressed by the rule that a domicil of choice is where a man's home is unless he has more than one home,[11] in which case his domicil is where his principal home is.[12] As a matter of fact, there is probably very little authority for the proposition that the court at the forum applies its own law of domicil.[13] It is also true that this is quite probably not sound Conflict of Laws technique. If other analogies in the Conflict of Laws are followed, the law of the forum will apply the rule of law of the state in which acts or events happen which are claimed to give a person a domicil in that state, just as the court in the forum will look to the law of the state in which any other act or event happens to determine the legal effect of that act. The actual cases will probably support this formula as much or perhaps more than the rule that the forum applies its own law. Since, however, the law of most common law states is in all but a few rare particulars the same rational rule, the problem involves only an application of the rule to the facts in any given case.

Domicil is, of course, a legal conclusion and not a fact. It represents a shorthand method of expressing a number of legal consequences which result from certain facts. The important facts in the determination of a domicil of choice are the person's physical presence in a state and an intention to make his home

[11] Ibid, § 14.

[12] Ibid, § 26.

[13] In practically all the cases, the court does not purport to apply the law of any particular state. It simply determines the domicil of the person in question upon such principles as can be obtained from the available authorities.

there.[14] It is the mental factor in the situation and the nebulous character of the concept "home" that makes it difficult to predict a person's domicil in many situations. In the determination of what constitutes a "home" or, if a person has more than one home, his "principal home," no rule of thumb can be laid down. A number of variables are to be considered. These variables have been described from time to time, and what is perhaps an adequate summary is set forth in the Restatement of Conflict of Laws of the American Law Institute.[15] It is there stated that among other things important consideration is to be given to: (1) the physical characteristics of the dwelling place, (2) the time spent therein, (3) the things done therein, (4) the persons and things therein, (5) the actor's mental attitude toward the place, (6) the actor's intention when absent to return there, and (7) elements of other dwelling places of the actor. The opinion of the Pennsylvania Supreme Court discloses facts which make the finding of the Pennsylvania domicil an extremely plausible one. Mr. Dorrance spent a preponderating amount of time at his Philadelphia dwelling as compared to a very small amount of time in New Jersey. Mr. Dorrance's immediate family lived with him in Philadelphia whereas his mother and sister occupied the New Jersey dwelling. The amount of money spent to maintain the Pennsylvania establishment in one year exceeded the amount of money expended to maintain the New Jersey residence by an amount in excess of eighty-five thousand dollars. on the other hand, Dr. Dorrance frequently asserted that he was domiciled in New Jersey, made his will on the assumption that he was there domiciled, and obviously desired a domicil in New Jersey. The Pennsylvania court, following orthodox principles, ignored the decedent's desire and attached weight to his actions.

With so many indefinable factors to be taken into account in determining domicil, it is not difficult to understand how the New Jersey court arrived at the conclusion that Dr. Dorrance was domiciled there. This, the court felt at liberty to do. While it is true that in some instances even jurisdictional facts may be *res judicata*,[16] this doctrine has no application to New Jersey in as much as the state of New Jersey was in no sense a party

[14] Goodrich, Conflict of Laws, § 22.

[15] Restatement of Conflict of Laws (P. F. Draft No. 1), § 15.

[16] American Surety Co. v. Baldwin (1932), 53 Sp. Ct. 98; Baldwin v. Iowa State Traveling Men's Assn. (1931), 283 U. S. 522.

to the proceedings in Pennsylvania and was thus not bound by findings made in that case. Again, New Jersey is not required to recognize the Pennsylvania decision if Pennsylvania had no jurisdiction to impose the tax,[17] and, of course, since jurisdiction depends upon domicil, the finding of domicil by that court based upon certain findings of fact as to the decedent's intention, is not, as pointed out in the New Jersey decision, conclusive on it. Therefore, while domicil is not a fact but a conclusion of law, it is a conclusion resulting from certain highly important facts, and in a case in which domicil is the jurisdictional point of contact, the vital fact of the intention of the decedent to make his home in any given place becomes a jurisdictional fact.

Since it is unconstitutional for any state to impose a tax without jurisdiction so to do, it would seem that in any case where domicil is thus involved as a jurisdictional prerequisite, the Supreme Court of the United States is bound to review the application of the law determining domicil for the purpose of ascertaining whether the law has been properly applied.[18] In the case of inheritance taxes, it would seem that the Supreme Court is bound to review such findings if properly presented, when made by the state first attempting to impose a tax on the ground that the decedent died domiciled there. Thus, it seems that the Pennsylvania decision was subject to review by the Supreme Court quite as much as is the present decision of the New Jersey court. It is true that the Pennsylvania case was the first decision of a court of last resort to uphold a tax in this case, but if the state of Pennsylvania had no jurisdiction so to do because Dr. Dorrance was not domiciled there at his death, there is clearly a taking of property without due process of law quite as much as when the court of New Jersey upholds the tax on the ground that Dr. Dorrance was domiciled in that state at his death if he was in fact not so domiciled. It can hardly be argued that the first state to pass upon the question is immune from review by the Supreme Court whereas states subsequently passing on the question of domicil are subject to such review. While such a distinction might almost be justified as a practical penalty for delay in judicial proceedings, it is hardly a satisfactory legal test in matters of such great importance.

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[17] Tilt v. Kelsey (1907), 207 U. S. 43, 28 Sp. Ct. 1.

[18] Restatement of Conflict of Laws (P. F. Draft No. 1), § 44.

It has been repeatedly stated by the Supreme Court of the United States that the mere refusal to review a state decision is not to be taken as of any significance in regard to the issues of law involved in the case.[19] Writs of certiorari are denied for many reasons which in no way affect the merits of the case. In the case of the appeal of the estate from the Pennsylvania decision, the Supreme Court for some reason declined to review the case, but it cannot be assumed that this refusal was because no federal question was involved. The Supreme Court may decline to review the decision of the New Jersey court, but again it cannot be concluded that no federal question is involved. If Dr. Dorrance's estate is unable to present the federal question clearly involved in the matter, or, having presented it, if the Supreme Court of the United States agrees with the Prerogative Court of New Jersey as to where Dr. Dorrance was domiciled at his death, it will obviously be unfortunate for the beneficiaries of the estate. But this may be merely the accidental penalty in a particular case of an attempt upon the part of a man of wealth to enjoy the advantage of a domicil in one state at the price exacted by another state.

FOWLER V. HARPER.

Indiana University Law School,
Bloomington, Indiana.

[19] Pim v. St. Louis (1897), 165 U. S. 273, 17 Sp. Ct. 322; Live Oaks Ass'n v. Railroad Comm. (1925) 269 U. S. 354, 46 Sp. Ct. 149; Appleby v. Buffalo (1911), 221 U. S. 524, 31 Sp. Ct. 699. The opinion in the Pennsylvania case does not indicate that the executors claimed that a Constitutional question was involved. The opinion of the Prerogative Court of New Jersey indicates that probably such contention was raised in that case. Of course, the record is the source of accurate information as to whether a Federal right was claimed by the executors in either case. Rose, Federal Jurisdiction and Procedure (4th ed.) § 644.